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FILED HARRISBURG PA

JUN 0 Y 2002

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE,

Plaintiff,

Civil No. 01-CV-1064

v.

(Judge Kane)

JAMES UPDIKE, et al.,

(Magistrate Judge Smyser)

Defendants.

<u>DEFENDANTS' PETITION FOR ALLOWANCE TO FILE A</u> <u>NUNC PRO TUNC STATEMENT OF FACTS AND EXHIBITS IN</u> <u>SUPPORT OF SUMMARY JUDGMENT MOTION</u>

AND NOW, comes Corrections Defendants, by and through their counsel, and petition the Court for permission to file *nunc pro tunc* statement of facts and supporting exhibits in support of their Motion for Summary Judgment and in support thereof aver as follows:

- 1. I am counsel originally assigned to this matter and have been with the office only since January 2002.
- 2. I filed, this, my first Motion for Summary Judgment on May 30, 2002.

- 3. Due to a misunderstanding on my part, I filed only the motion with anticipation of filing the brief and exhibits within 10 days.
- 4. I filed the Brief and Exhibits on June 6, 2002.
- 5. I realize now that the Summary Judgment Motion should have been filed with my statement of facts and accompanying documentation. In accordance with Fed. Rule of Civil Procedure 56 and LR 56.1.
- 6. I apologize to the court for this error and for any delay or any inconvenience it may have caused.

WHEREFORE, counsel for Corrections Defendant's requests Your Honorable Court to allow Defendants to file *nunc pro tunc*, their Statement of Facts and accompanying exhibits pursuant to Federal Rule of Civil Procedure 56, LR 56.1.

Respectfully submitted, Department of Corrections,

Marsha M. Davis

Assistant Counsel

Attorney I.D. No. 28018

Office of Chief Counsel

55 Utley Drive

Camp Hill, PA 17011

717-731-0444

Dated: June 7, 2002

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE,

Plaintiff, : Civil No. 01-CV-1064

v. : (Judge Kane)

JAMES UPDIKE, et al., : (Magistrate Judge Smyser)

Defendants. :

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of Defendants' Petition for Allowance to File a *nunc pro tunc* Statement of Ffacts and Eexhibits in Support of Summary Judgment Motion in the above-referenced matter.

Service by first-class mail addressed as follows:

Phan Hue, DY 0577

SCI-Retreat

660 State Route 11

Hunlock Creek, Pa. 18621

Alan Gold, Esquire

Monaghan & Gold, P.C.

7837 Old York Road

Elkins Park, PA 19027

Marilyn Jones Clerk Typist 2

Department of Corrections Office of Chief Counsel 55 Utley Drive Camp Hill, PA 17011 (717) 731-0444

Dated: June 7, 2002